

CHARLES H. DORMAN ET AL.

IBLA 85-568

Decided July 24, 1986

Appeal from a decision of the Peninsula Resource Area Office, Alaska, Bureau of Land Management, terminating grazing leases A-015024 and A-031348.

Affirmed.

1. Alaska: Grazing -- Grazing and Grazing Lands -- Grazing Leases: Cancellation or Reduction

When an assignee of a grazing lease agrees to an additional stipulation providing that the grazing lease may be terminated upon 30 days notice if the BLM acts upon a state selection application, BLM need not submit a state grazing lease as part of its notice of termination.

APPEARANCES: Charles H. Dorman, Joanne Dorman, Earl Smith, and Donna Smith, Kodiak, Alaska, pro sese; James R. Mothershead, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Charles H. Dorman, Joanne Dorman, Earl Smith, and Donna Smith (collectively referred to as appellants) have appealed from an April 1, 1985, decision of the Peninsula Resource Area Office, Alaska, Bureau of Land Management (BLM), that grazing leases A-015024 and A-031348 would terminate on May 1, 1985.

The original grazing leases for lands located on the northern shore of Ugak Bay, Kodiak Island, Alaska, were issued in 1971. As a result of an assignment of the leases, the leases were reissued to appellants, effective January 1, 1980. Lease A-015024 was for a term expiring on December 31, 1995, and lease A-031348 was for a term expiring on December 31, 2001. Both leases are subject to the terms and conditions of the lease agreements, including "Additional Conditions as Stipulations." As one of the additional stipulations was the basis for the BLM decision, we deem it appropriate to set that stipulation forth in full:

- (1) This lease will be cancelled upon 30 days written notice to the lessee when the BLM is able to act upon the State's selection applications. The lessee shall thereupon be entitled

to the right to apply to the State for a preference right grazing lease under A538.05.075 [sic], which specifies that the lessee shall enjoy any of the rights or benefits he enjoyed under the Federal lease, through the statutory life of the Federal lease. <sup>1/</sup>

The lands subject to grazing leases A-015024 and A-031348 are included in State selection applications AA-561, AA-669, AA-670, A-060454, A-056404, and A-056430.

In its April 1, 1985, decision, which was received by appellants on April 4, 1985, BLM notified appellants of pending tentative approval for patent of the leased lands and that the lease would terminate on May 1, 1985. This decision provides, in pertinent part:

Termination of Grazing Lease

The State of Alaska has selected lands which are under lease to you under the authority of Section 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339). The tentative approval for patent of these lands to the State is to be on or around May 1, 1985.

Section 4 [sic] of your lease stipulates: "This lease will be cancelled upon 30 days written notice to the lessee when the BLM is able to act upon the State's selection application. The lessee shall thereupon be entitled the right to apply to the State for a preference right grazing lease under A538.05.075 [sic], which specifies that the lessee shall enjoy any of the rights or benefits he enjoyed under the Federal lease, through the statutory life of the Federal lease." Receipt of this Decision constitutes the official action pursuant to this stipulatory condition of your lease. Your Federal lease (A-015024 and A-031348) will terminate on May 1, 1985.

Appellants filed an appeal from the BLM decision on April 29, 1985. In the notice of appeal and statement of reasons, appellants make the following statements in support of their appeal:

It is the intent of this letter to appeal the transfer of BLM leases numbers A0015024 and A0031348 at this point in time. Realizing that correspondence until now indicates that terms under State jurisdiction will be same as those under BLM, it appears in talking with State representative that this may not be

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<sup>1/</sup> The proper citation is AS 38.05.075(b). This State statute provides:

"(b) When a valid existing federal grazing lease is cancelled to allow state selection of the area under lease, the lessee of the land has the preference right to lease the land without competitive bidding for a term equal to that originally granted in the cancelled federal lease and upon terms as favorable to the lessee as those contained in the cancelled federal lease."

true. If this is so, our appeal to the transfer is that the State should have a lease agreement available for inspection prior to the transfer so that it may be reviewed as to the exact terms. Telephone calls to this date have failed to get any definite statements as to terms dealing with such an item as to lease renewal procedure. Just this one item is vitally necessary for the development plan we have submitted for the leases.

Let me reiterate that we are appealing this transfer because of the State's failure to have a written lease agreement that would replace BLM's prior to the transfer.

An answer was subsequently filed on behalf of BLM.

[1] Appellants argue that the lease should not be terminated because on the date of notice of lease termination, the State did not have a written lease agreement to replace the ones being terminated. Recognizing the lack of a lease from the State places appellants in a somewhat unenviable position, we cannot find this to be a basis for finding BLM's action to be contrary to the terms and conditions of the leases between appellants and BLM. A careful reading of Additional Stipulation (1) clearly indicates the contrary.

Additional Stipulation (1) provides that the lease may be cancelled upon 30 days notice if BLM is able to act upon the State's selection application. Appellants do not contend, and there is nothing in the record to indicate that, at the time of issuance of the notice, BLM was unable to act on the State selection application. The lease itself would not bar such action because its terms specifically provide for termination of the lease upon 30-days written notice.

Had the language not been made a part of the lease in 1980, the action by BLM as a result of the State selection applications would not be barred. As noted in Sandra M. Pestrikoff, 23 IBLA 197 (1976), the State's rights date from the date of filing the application, and a State selection application is properly treated as a petition to cancel a conflicting grazing lease. BLM may therefore, process the selection application, and all else being in order, tentatively approve the selection for patent.

BLM can terminate a grazing lease pursuant to statutory or regulatory authority or the terms of the lease. Even if there were no lease terms permitting termination of the lease in contemplation of transfer of the lands to the State of Alaska, BLM would have discretionary authority to do so. See 43 CFR 4230.1; Estate of C. Walter Keaster, 47 IBLA 363 (1980). There being authority to terminate the lease under the regulations and the lease terms, we will now examine the provisions of Additional Stipulation (1) to determine if the lease terms required the State or BLM to submit a substitute a State lease as a condition precedent to termination.

The applicable provision of Additional Stipulation (1) provides that, upon receipt of notice of termination lessee shall be "entitled to the right to apply to the State for a preference right grazing lease under A538.05.075 (sic)." (Emphasis added.) This special stipulation does not assure that

a state lease will be issued or that, if issued, the lease terms and conditions of the State lease will be comparable to the terms and conditions of the existing lease. It merely indicates that, during the period between notice and tentative approval, appellants have the right to apply for a grazing lease with the State of Alaska, thus establishing a preferential position pursuant to AS 38.05.075. The provisions of Additional Stipulation (1) only provide that BLM will not oppose appellants' application. 2/ We find no error in the April 1, 1985, BLM decision which would cause us to reverse that decision. 3/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Franklin D. Arness  
Administrative Judge

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2/ This opinion does not address what rights appellant may have by reason of AS 38.05.75(b), as the interpretation and enforcement of that section of the Alaska statutes is outside the jurisdiction of this Board.

3/ A technical violation of the lease agreement occurred when the notice, which was received on Apr. 4, 1985, stated the lease would terminate on May 1, 1985. Additional Stipulation (1) provided for "30 days written notice." Thus, the lease should have terminated on the 4th, rather than the 1st of May. However, we perceive no reason to believe this error to be material.

